MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

April 28, 2009

To All Persons on the Service List   **BY U.S. MAIL, E-MAIL
AND eFILING**

RE: ITMO the Applications to the Minnesota Public Utilities Commission for Two Certificates of Need and Site Permit for the Prairie Island Nuclear Generating Plant for Extended Power Uprate and Additional Dry Cask Storage; OAH Docket No. 7-2500-19797-2; MPUC Docket Nos. E002/CN-08-509 and 08-510, GS-08-690

Please find enclosed and served on you the executed Protective Order in the above-entitled matter. The terms of the Protective Order are those of the red-lined version circulated last week. I have considered the submissions of the parties, including the letter from OES in selecting these terms.

OES expressed concern that the procedure in the Minnesota Government Data Practices Act (MGDPA) would not adequately address the handling of trade secret information consistent with the needs of the contested case process. For that reason, OES urged retention of the language "Notwithstanding, and in lieu of, any requirements of the MGDPA to the contrary," prior to three items in the Protective Order.

The ALJ agrees that the process set out in the MGDPA is not suitable for handling the specific items at issue. But the language proposed purports to authorize handling data inconsistent with the MGDPA. Such authority could only arise out of equity, which is lacking in an administrative tribunal. The ALJ's direct authority regarding the record is conferred by Minn. Stat. § 14.60, subd. 2, which states in pertinent part: "When the hearing record contains information which is not public, the administrative law judge or the agency may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record."

These statutes work in tandem to afford the necessary protections required for handling not public data in contested case proceedings. The MGDPA provides the overall approach to handling public and not public data, and the Protective Order issued under Minn. Stat. § 14.60, subd. 2, provides the specific requirements that must be met while this matter is under the jurisdiction of the ALJ, and for so long as the Protective Order is effective. The terms of the Protective Order, as issued, address the specific situations raised by OES. The handling of trade secret data under the Protective Order is not compromised, due to the express authority provided under Minn. Stat. § 14.60.

Very truly yours,

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

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Enclosures